



Cato Institute panel discusses obscure but pivotal gay civil rights case

By Richard Sincere
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A largely forgotten but pivotal civil rights case was the subject of [a panel discussion at the Cato Institute](#) in Washington on November 24.

The event was sparked by a February [blog post](#) on *The Washington Post's* Volokh Conspiracy by Jonathan Rauch, author of [Kindly Inquisitors: The New Attacks on Free Thought](#). In it, Rauch asked:

“Have you ever heard of *ONE v. Olesen*? I bet not. I certainly hadn’t, until a few weeks ago. Yet this case, whose inception marks its 60th anniversary in 2014, is arguably the seminal [gay rights](#) case in America — the one that extended First Amendment protection to gay-related speech.”

[ONE Inc. v. Olesen](#) was a 1958 U.S. [Supreme Court](#) decision, issued without an opinion, that permitted a gay-oriented magazine to be delivered through the postal system despite allegations that it contained “obscene” material.

Rauch was one of the speakers on the panel, which was moderated by Cato's Walter Olson, along with First Amendment expert Robert Corn-Revere of Davis Wright Tremaine LLP in Washington and Lisa A. Linsky, a partner in the New York law firm of McDermott Will & Emery LLP. Linsky's firm is working *pro bono* on behalf of the [Mattachine Society of Washington](#) to unearth a trove of documents related to *ONE Inc.* and related legal matters dating back six and seven decades – documents that are buried deep within government archives in the Department of Justice, U.S. Postal Service, FBI, and other bureaucracies.

Paranoid decade

Linsky began the discussion – which was recorded by C-SPAN for later broadcast – by noting the general tenor of the times in the 1950s. Television featured perfect nuclear families on *Leave It to Beaver* and *The Donna Reed Show*. There was Cold War tension and competition between the United States and the Soviet Union. And, within the federal government, there was paranoia about infiltration by Communists and “sexual perverts.”

It was those perverts – homosexuals, really – who were the target of President Eisenhower's executive order number 10450, which brought the full weight of the federal government's authority with “ferocity” in efforts to purge government and society of so-called perverts.

Linsky presented a number of memoranda from FBI files that showed how deep the federal conspiracy against gay people went. She gave the example of one man – married, presumably heterosexual – who, after making a joke at a social event about FBI director J. Edgar Hoover being “queer,” was subjected to a third-degree interrogation by FBI agents and made to promise that he would never, ever say such a thing again.

That was in 1952. In 1954, at the urging of Senator Alexander Wiley, the Los Angeles-based magazine *ONE*, which published articles about such topics as the possibility of gay marriage, was challenged by the Post Office as unsuitable to be sent through the mails because it was “obscene.” Ironically, as Jonathan Rauch noted later in the discussion, the issue of the magazine that led to the challenge had a cover story about government censorship. In other words, questioning censorship resulted in censorship.

Robert Corn-Revere took over the discussion and led a Power Point presentation on the history of obscenity laws, from Victorian times (the 1873 Comstock Act, which is still on the books) to [*Roth v. United States*](#), a 1957 decision that shifted the legal standard for obscenity to allow for consideration of the value of the work as a whole and how it would be perceived by the average member of society, rather than any (even insignificant) content and how it would affect the most feeble-minded reader.

Voice to the voiceless

Although these events took place decades ago, Rauch said, “this is not ancient history. The principle is alive today.” Linsky noted that the current work of the Mattachine Society of Washington is a “testament to history itself,” because it is “giving voice to individuals who couldn't stand up for themselves.”

Noting the progress over the past several decades – including legal gay marriage in the majority of states, the end to the gay military ban, and other legal achievements – Rauch said that *ONE Inc. v. Olesen* is “the most important civil rights case we've ever had” as gay people and it put gay men and lesbians “on the path to freedom,” because it provided the legal foundation to talk about ideas and to “transmit those ideas at a great personal risk.”

After a series of questions and answers with the audience, moderator Walter Olson noted the importance of the discussion, which has broader applications than simply gay Americans. It demonstrated, he said, how “freedom of expression” assists the liberation of “historically marginalized groups” and their individual members and that, ultimately, suppression of speech and the press harms those groups by depriving them of their capacity to argue for their own dignity and civil rights.